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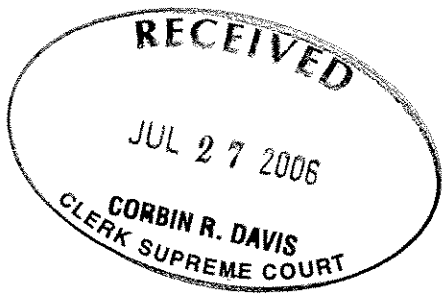


Re: Administrative File 2005-19

Dear Sir:

I have reviewed the proposed amendments to the court rules regarding the procedures in jury trials. I have practiced law for 33 years, and tried many jury trials, both as a prosecutor and as a criminal defense attorney, and have tried a few civil jury trials. In general, I support the proposed changes, which I think are not such vast breaks with the past as to cause problems, except in small minds.

I have these comments with respect to some of the proposed changes:

2.512(A)(2) [Requests for instructions]: " . . . each party SHALL submit in writing . . . a statement of the issues, ..." Compare the permissive language, "MAY submit the party's theory of the case . . ." later in the same sentence. This mandatory requirement seems unnecessary in many District Court trials, both criminal and civil, and is often unneeded in many Circuit Court criminal trials. We don't need the extra work, especially if we are to continue to be underpaid for court-appointed work, with no hope of any state funding therefor. Paying clients don't need to pay us for unnecessary labor.

2.512(B)(2) [Instructions]: Will we be able to argue to the jury AFTER final instructions? Please let us do so, or at least have the option to do so. Proposed 2.513(N)(1) seems to foreclose that possibility, which 2.512(B)(2) seems to offer. To the extent proposed 2.512(B)(2) and 2.513(N)(1) are inconsistent, they should be harmonized. I vote for final instructions first, then final argument. If the judge were to choose to comment upon the evidence, those comments should also come before the arguments of counsel, so that they might be answered, if a party has answer for them. I've only seem comments on the evidence in one case in Michigan, though I once spent an entire afternoon in the Old Bailey, watching a judge sum up for the jury, not the law, but the testimony, in a murder case. Essentially, he told the jurors that the defense of accident could safely be disposed of by virtue of the facts that the deceased died of a knife wound which penetrated

his overcoat, his suit coat, his sweater, his dress shirt, his undershirt, then nicked a rib, and penetrated five inches into the lung. In a similar way, he was also telling the jury that the death was not a murder, but was nothing more serious than manslaughter.

2.513(D) [Interim commentary]: I'm not sure how this is supposed to work, as I haven't yet had a chance to read the *Consorti* case referenced in the comments. I sense this is something that most current trial judges would fear allowing, and so it would remain a dead letter.

2.513(G)(3) [Expert panel discussion]: In criminal cases, I see no way that a panel discussion among the experts can be done in a way that is consistent with the defendant's rights to confront, and to cross-examine, the witnesses against him.

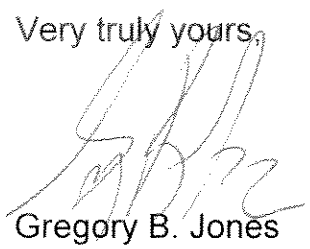
2.513(K) [Juror discussions during recesses]: We all know they very likely do it anyway. If they are not discussing the case among themselves, they are thinking about it individually. Two heads, or six, or twelve, or fourteen, may well be better than one.

2.513(N)(1) [Final instructions]: This proposes that the practice be, as now, that final instructions be given after the arguments of counsel. I'd like to urge that instructions precede the arguments of counsel, or at least, that the parties have the option to have instructions before argument.

2.513(N)(3) [Copies of final instructions]: As one individual has already pointed out, these are often unnecessary in most District Court criminal cases. They might well be unnecessary in many District Court civil cases. As an example, I give you my last District Court civil jury trial. It was tried essentially on the question of how much in damages the plaintiff suffered when his boat was involved in a collision with the defendant's boat. Similarly, many criminal jury trials are on these questions: Did the defendant know the dope was present? Did the defendant know the dope was, in fact, dope? If the answers are, "yes," and "yes," the defendant is convicted. One negative answer, and the defendant walks. Do we really need to provide six, or twelve, copies of instructions in those cases?

2.513(N)(4) [Clarifying instructions]: I like the idea of asking the jurors what they are divided about, or confused about, as I think it will help prevent some of the truly absurd results that all of us with jury trial experience have seen.

Very truly yours,



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